

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 07-01819 CW

IN RE: STATIC RANDOM ACCESS MEMORY  
(SRAM) ANTITRUST LITIGATION,

ORDER GRANTING IP  
PLAINTIFFS' MOTION  
FOR CLASS  
CERTIFICATION AND  
DENYING MOTIONS TO  
EXCLUDE EXPERT  
OPINIONS

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In this antitrust multi-district litigation, Indirect Purchaser Plaintiffs (IP Plaintiffs) move for class certification pursuant to Rule 23 of the Federal Rules of Civil Procedure. Defendants<sup>1</sup> oppose the motion. Having considered oral argument and

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<sup>1</sup>Defendants are Samsung Electronics Company, Ltd., Samsung Electronics America, Inc., Samsung Semiconductor, Inc., Hynix Semiconductor, Inc., Hynix Semiconductor America, Inc., Micron  
(continued...)

1 all of the papers filed by the parties, the Court grants IP  
 2 Plaintiffs' motion for class certification and denies the parties'  
 3 motions to exclude expert opinions.

#### 4 BACKGROUND

5 The facts of this case were laid out in greater detail in the  
 6 Court's order on the initial motions to dismiss. In brief, IP  
 7 Plaintiffs are a group of individuals and companies that purchased  
 8 Static Random Access Memory (SRAM) indirectly from one or more  
 9 Defendants, for end use and not for resale. Defendants are various  
 10 corporations that sold SRAM to customers throughout the United  
 11 States.

12 SRAM is a type of memory device that cannot retain stored data  
 13 absent a source of power. SRAM is used in a variety of product  
 14 markets, including: (1) the communications market in cell phones  
 15 and Voice Over Internet Protocol (VOIP) technology; (2) the  
 16 computer market in servers, mainframes, high-end computer  
 17 workstations, and personal digital assistants (PDAs) and smart  
 18 phones; and (3) the networking communications market in routers,  
 19 switches, proxy and gateway devices, modems, storage area networks  
 20 and firewalls. Michael Harris Decl. ¶¶ 14-17. There are three  
 21 general types of SRAM: (1) asynchronous SRAM (typically called slow  
 22 or low power), which is used in mobile phones and other hand-held  
 23 devices that contain a central processor, (2) synchronous SRAM

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24  
 25 <sup>1</sup>(...continued)

26 Technology, Inc., Micron Semicondcutor Products, Inc., NEC  
 27 Electronics Corp., NEC Electronics America, Inc., Cypress  
 28 Semiconductor, Inc., Mitsubishi Electric Corp., Mitsubishi Electric  
 & Electronics USA, Inc., Renesas Technology Corp., Renesas  
 Technology America, Inc., Toshiba Corp., Toshiba America Electronic  
 Components, Inc. and Etron Technology America, Inc.

1 (typically called fast or high power), which is generally found in  
2 computers and networking equipment and (3) pseudo SRAM (PSRAM),  
3 which is found in smart phones and other devices that require low  
4 power consumption and fast memory. Id. at ¶¶ 8-13.

5 During the class period, Defendants possessed sixty to seventy  
6 percent of the market share of total SRAM sales. Defendants sell  
7 SRAM to various customers, both large and small scale, through a  
8 variety of distribution paths. SRAM manufactured by Defendants can  
9 be purchased by an SRAM distributor and resold to an original  
10 equipment manufacturer (OEM) or purchased by a contract  
11 manufacturer. Contract manufacturers create individual SRAM  
12 components and finished products containing SRAM for OEMs. Thus,  
13 OEMs purchase SRAM directly from SRAM manufacturers, distributors  
14 and contract manufacturers. OEMs then sell SRAM directly to  
15 consumers or to consumers through a reseller, distributor or  
16 retailer. Id. ¶¶ 41-47.

17 IP Plaintiffs allege that, between 1996 and 2006, Defendants  
18 conspired to fix and maintain artificially high prices for SRAM.  
19 According to IP Plaintiffs, Defendants carried out this conspiracy  
20 through in-person, telephone and email communications regarding  
21 pricing to customers and market conditions. IP Plaintiffs allege  
22 violations of Section 1 of the Sherman Act, California's Cartwright  
23 Act, California Business and Professions Code §§ 16720 and 17200,  
24 and numerous other states' antitrust, unfair competition and  
25 consumer protection laws. They seek disgorgement of profits and  
26 unjust enrichment.

27 IP Plaintiffs seek certification of a nation-wide class for  
28 injunctive relief defined as follows:

1 All persons and entities residing in the United  
 2 States who, from November 1, 1996 through at least  
 3 December 31, 2006, purchased SRAM in the United  
 4 States indirectly from the Defendants for their  
 5 own use and not for resale. Specifically excluded  
 6 from this class are the Defendants; the officers,  
 7 directors or employees of any Defendant; any  
 8 entity in which any Defendant has a controlling  
 interest; and any affiliate, legal representative,  
 heir or assign of any Defendant. Also excluded  
 are any federal, state or local governmental  
 entities, any judicial officer presiding over this  
 action and the members of his/her immediate family  
 and judicial staff, and any juror assigned to this  
 action.

9 IP Plaintiffs also move to certify twenty-seven separate classes  
 10 pursuant to Fed. R. Civ. P. 23(b)(3).<sup>2</sup> Those classes represent  
 11 residents of Arizona, Arkansas, California, Florida, Hawaii, Iowa,  
 12 Kansas, Maine, Massachusetts, Michigan, Minnesota, Montana, Nevada,  
 13 New Mexico, New York, North Carolina, North Dakota, Pennsylvania,  
 14 Rhode Island, South Dakota, Tennessee, Utah, Washington, West  
 15 Virginia, Wisconsin, Puerto Rico and the District of Columbia.

#### 16 LEGAL STANDARD

17 Plaintiffs seeking to represent a class must satisfy the  
 18 threshold requirements of Rule 23(a) as well as the requirements  
 19 for certification under one of the subsections of Rule 23(b). Rule  
 20 23(a) provides that a case is appropriate for certification as a  
 21 class action if: "(1) the class is so numerous that joinder of all  
 22 members is impracticable; (2) there are questions of law or fact  
 23 common to the class; (3) the claims or defenses of the

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24  
 25 <sup>2</sup>IP Plaintiffs note that their classes are "not meant to and  
 26 do not include purchasers of used or refurbished products  
 27 containing SRAM." Reply at 18 n.17. Their use of the phrase "not  
 28 for resale" in the class definition "is meant to limit the class to  
 persons who purchased new products (and not products that were  
 refurbished and bought from E-bay or elsewhere) and to eliminate  
 retailers, wholesalers, distributors and other resellers." Reply  
 at 21 n.21.

1 representative parties are typical of the claims or defenses of the  
2 class; and (4) the representative parties will fairly and  
3 adequately protect the interests of the class." Fed. R. Civ. P.  
4 23(a).

5 Rule 23(b) further provides that a case may be certified as a  
6 class action only if one of the following is true:

7 (1) prosecuting separate actions by or against individual  
8 class members would create a risk of:

9 (A) inconsistent or varying adjudications with  
10 respect to individual class members that would  
11 establish incompatible standards of conduct for the  
12 party opposing the class; or

13 (B) adjudications with respect to individual class  
14 members that, as a practical matter, would be  
15 dispositive of the interests of the other members  
16 not parties to the individual adjudications or would  
17 substantially impair or impede their ability to  
18 protect their interests;

19 (2) the party opposing the class has acted or refused to  
20 act on grounds that apply generally to the class, so that  
21 final injunctive relief or corresponding declaratory  
22 relief is appropriate respecting the class as a whole; or

23 (3) the court finds that the questions of law or fact  
24 common to class members predominate over any questions  
25 affecting only individual members, and that a class  
26 action is superior to other available methods for fairly  
27 and efficiently adjudicating the controversy. The  
28 matters pertinent to these findings include:

(A) the class members' interests in individually  
controlling the prosecution or defense of separate  
actions;

(B) the extent and nature of any litigation  
concerning the controversy already begun by or  
against class members;

(C) the desirability or undesirability of  
concentrating the litigation of the claims in the  
particular forum; and

(D) the likely difficulties in managing a class  
action.

Fed. R. Civ. P. 23(b).

1 Plaintiffs seeking class certification bear the burden of  
2 demonstrating that each element of Rule 23 is satisfied, and a  
3 district court may certify a class only if it determines that  
4 plaintiffs have borne their burden. General Tel. Co. v. Falcon,  
5 457 U.S. 147, 158-61 (1982); Doninger v. Pac. Nw. Bell, Inc., 564  
6 F.2d 1304, 1308 (9th Cir. 1977). In making this determination, the  
7 court may not consider the merits of plaintiffs' claims.  
8 Burkhalter Travel Agency v. MacFarms Int'l, Inc., 141 F.R.D. 144,  
9 152 (N.D. Cal. 1991). Rather, the court must take the substantive  
10 allegations of the complaint as true. Blackie v. Barrack, 524 F.2d  
11 891, 901 (9th Cir. 1975). Nevertheless, the court need not accept  
12 conclusory or generic allegations regarding the suitability of the  
13 litigation for resolution through class action. Burkhalter, 141  
14 F.R.D. at 152. In addition, the court may consider supplemental  
15 evidentiary submissions of the parties. In re Methionine Antitrust  
16 Litig., 204 F.R.D. 161, 163 (N.D. Cal. 2001) (Methionine I); see  
17 also Moore v. Hughes Helicopters, Inc., 708 F.2d 475, 480 (9th Cir.  
18 1983) (noting that "some inquiry into the substance of a case may  
19 be necessary to ascertain satisfaction of the commonality and  
20 typicality requirements of Rule 23(a)"; however, "it is improper to  
21 advance a decision on the merits at the class certification  
22 stage"). Ultimately, it is in the district court's discretion  
23 whether a class should be certified. Burkhalter, 141 F.R.D. at  
24 152.

25 "Class actions play an important role in the private  
26 enforcement of antitrust actions. For this reason courts resolve  
27 doubts in these actions in favor of certifying the class." In re  
28 Rubber Chemicals Antitrust Litig., 232 F.R.D. 346, 350 (N.D. Cal

2005).

## DISCUSSION

### I. Class Definitions

Defendants first argue that class certification must be denied because IP Plaintiffs' proposed class definitions are not precise and the identity of the class members is not objectively ascertainable. "An adequate class definition specifies 'a distinct group of plaintiffs whose members [can] be identified with particularity.'" Campbell v. PricewaterhouseCoopers, LLP, 253 F.R.D. 586, 593 (E.D. Cal. 2008) (quoting Lerwill v. Inflight Motion Pictures, Inc., 582 F.2d 507, 512 (9th Cir. 1978)). "The identity of class members must be ascertainable by reference to objective criteria." 5 James W. Moore, Moore's Federal Practice, § 23.21[1] (2001). Thus, a class definition is sufficient if the description of the class is "definite enough so that it is administratively feasible for the court to ascertain whether an individual is a member." O'Connor v. Boeing N. Am., Inc., 184 F.R.D. 311, 319 (C.D. Cal. 1998).

Here, the class definitions meet this standard. The definitions of the classes are relatively straightforward. Class members (1) must live in a particular state, (2) cannot be a direct purchaser, (3) cannot be a reseller, (4) must have made a purchase within the relevant time period and (5) must have purchased a product containing SRAM made by a Defendant. These definitions are not subjective or imprecise. IP Plaintiffs will be able to identify all products that contain Defendants' SRAM by analyzing Defendants' documents, testimony from Defendants' personnel, third party transactional data, third party discovery responses that

1 state whether their products contain SRAM, BoMs<sup>3</sup> from OEMs and  
2 contract manufacturers, and publicly available information. Thus,  
3 absent class members will easily be able to identify themselves.

4 II. Class Certification Under Rule 23(a)

5 To certify a class, IP Plaintiffs must satisfy Rule 23(a). As  
6 noted above, Rule 23(a) provides that a case is appropriate for  
7 certification as a class action if: "(1) the class is so numerous  
8 that joinder of all members is impracticable; (2) there are  
9 questions of law or fact common to the class; (3) the claims or  
10 defenses of the representative parties are typical of the claims or  
11 defenses of the class; and (4) the representative parties will  
12 fairly and adequately protect the interests of the class."

13 Defendants do not dispute IP Plaintiffs' assertion that this  
14 action satisfies the numerosity and commonality requirements of  
15 Rule 23(a)(1) and (2), and the Court finds that it does. See 1  
16 Alba Cone & Herbert B. Newberg, Newberg on Class Actions § 3.3 (4th  
17 ed. 2002) (where "the exact size of the class is unknown, but  
18 general knowledge and common sense indicate that it is large, the  
19 numerosity requirement is satisfied"); Hanlon v. Chrysler Corp.,  
20 150 F.3d 1011, 1019 (9th Cir. 1998) ("All questions of fact and law  
21 need not be common to satisfy [Rule 23(a)(2)]. The existence of  
22 shared legal issues with divergent factual predicates is  
23 sufficient, as is a common core of salient facts coupled with  
24 disparate legal remedies within the class.")

25 Defendants assert that class certification must fail because  
26 (1) IP Plaintiffs cannot meet the typicality requirement of Rule

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28 <sup>3</sup>BoM is the acronym for Bill of Materials.



1 23(a)(3) and (2) IP Plaintiffs cannot protect the interests of all  
2 class members as required by Rule 23(a)(4).

3 A. Typicality

4 The typicality prerequisite of Rule 23(a) is fulfilled if "the  
5 claims or defenses of the representative parties are typical of the  
6 claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). The  
7 test for typicality is "whether other members have the same or  
8 similar injury, whether the action is based on conduct which is not  
9 unique to the named plaintiffs, and whether other class members  
10 have been injured by the same course of conduct." Hanon v.  
11 Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992) (quoting  
12 Schwartz v. Harp, 108 F.R.D. 279, 282 (C.D. Cal. 1985)). "Under  
13 the rule's permissive standards, representative claims are  
14 'typical' if they are reasonably co-extensive with those of absent  
15 class members; they need not be substantially identical." Hanlon,  
16 150 F.3d at 1020. "The typicality requirement does not mandate  
17 that products purchased, methods of purchase, or even damages of  
18 the named plaintiffs must be the same as those of the absent class  
19 members." In re Vitamins Antitrust Litig., 209 F.R.D. 251, 261  
20 (D.D.C. 2002).

21 Here, all of the IP Plaintiffs are indirect purchasers of SRAM  
22 who allege that Defendants engaged in a price-fixing conspiracy.  
23 As the Court noted when it certified the DP Plaintiff class, "the  
24 overarching price fixing scheme is the linchpin of [IP] Plaintiff's  
25 complaint, 'regardless of the product purchased, the market  
26 involved or the price ultimately paid.'" In re Static Random  
27 Access Memory (SRAM) Litig., 2008 WL 4447592, \*3 (quoting In re  
28 Flat Glass Antitrust Litig., 191 F.R.D. 472, 480 (W.D. Pa 1999)).

1 Thus, IP Plaintiffs' claims are typical even though they may have  
2 used different purchasing procedures, purchased different  
3 quantities or a different mix of products, or received different  
4 prices than other class members. Accordingly, Rule 23(a)(3)'s  
5 typicality requirement is met.

6 B. Adequate Representation

7 Rule 23(a)(4) requires that "the representative parties will  
8 fairly and adequately protect the interests of the class." Fed. R.  
9 Civ. P. 23(a)(4). The adequacy requirement consists of two  
10 inquiries: "(1) do the representative plaintiffs and their counsel  
11 have any conflicts of interest with other class members, and  
12 (2) will the representative plaintiffs and their counsel prosecute  
13 the action vigorously on behalf of the class?" Staton v. Boeing  
14 Co., 327 F.3d 938, 958 (9th Cir. 2003). Defendants challenge IP  
15 Plaintiffs as to both requirements of the rule.

16 The mere potential for a conflict of interest is not  
17 sufficient to defeat class certification; the conflict must be  
18 actual, not hypothetical. See Cummings v. Connell, 316 F.3d 886,  
19 896 (9th Cir. 2003) ("[T]his circuit does not favor denial of class  
20 certification on the basis of speculative conflicts."); Soc. Servs.  
21 Union, Local 535 v. County of Santa Clara, 609 F.2d 944, 948 (9th  
22 Cir. 1979) ("Mere speculation as to conflicts that may develop at  
23 the remedy stage is insufficient to support denial of initial class  
24 certification."); Blackie v. Barrack, 524 F.2d 891, 909 (9th Cir.  
25 1975) (noting that class members might have differing interests at  
26 later stages of litigation, but that "potential conflicts" do not  
27 present a valid reason for refusing to certify a class).  
28 Defendants argue that several proposed representatives are not

1 adequate because they have business or personal relationships with  
2 the attorneys who represent them in this case. For instance, one  
3 representative Plaintiff is the uncle of one of Plaintiffs'  
4 attorneys and some of the other representative Plaintiffs know some  
5 of Plaintiffs' attorneys socially or have had prior business  
6 dealings with them. However, Defendants have not shown how any of  
7 these relationships have manifested a conflict nor have they  
8 provided legal authority that establishes that these relationships  
9 establish conflicts. To the contrary, it "would seem a bit  
10 anomalous that an individual whose [relative or friend] has  
11 developed a reputation as a competent [] lawyer should be  
12 prohibited from turning to his [relative or friend] for assistance  
13 if he has a legitimate legal claim." Lewis v. Goldsmith, 95 F.R.D.  
14 15, 20 (D.N.J. 1982).

15 Defendants also challenge representative Plaintiffs' level of  
16 participation in the case. While class representatives must be  
17 familiar with the basics of, and "understand the gravamen" of,  
18 their claims, it is not necessary that they be "intimately familiar  
19 with every factual and legal issue in the case." Moeller v. Taco  
20 Bell Corp., 220 F.R.D. 604, 611 (N.D. Cal. 2004). A class  
21 representative "will be deemed inadequate only if she is  
22 'startlingly unfamiliar' with the case." Id. (quoting Greenspan v.  
23 Brassler, 78 F.R.D. 130, 133-34 (S.D.N.Y. 1978). Here, IP  
24 Plaintiffs have been involved in providing answers to written  
25 discovery and giving depositions and have shown that they can carry  
26 out the duties of class representatives. Thus, IP Plaintiffs meet  
27 the requirements of Rule 23(a)(4).  
28

## 1 III. Class Certification Under Rule 23(b)(2)

2 IP Plaintiffs move for certification of a nation-wide  
3 injunctive relief class under Rule 23(b)(2). The class "seeks to  
4 enjoin Defendants from engaging in conduct that continues to cause  
5 prices for SRAM to be fixed at supracompetitive levels." Motion at  
6 40.

7 Rule 23(b)(2) permits certification where "the party opposing  
8 the class has acted or refused to act on grounds that apply  
9 generally to the class, so that final injunctive relief or  
10 corresponding declaratory relief is appropriate respecting the  
11 class as a whole." Federal R. Civ. P. 23(b). "Class certification  
12 under Rule 23(b)(2) is appropriate only where the primary relief  
13 sought is declaratory or injunctive." Zinser v. Accufix Research  
14 Institute, Inc., 253 F.3d 1180, 1195 (9th Cir. 2001). A class  
15 seeking monetary damages may be certified pursuant to Rule 23(b)(2)  
16 where such relief is "merely incidental to [the] primary claim for  
17 injunctive relief." Probe v. State Teachers' Retirement Sys., 780  
18 F.2d 776, 780 (9th Cir. 1986).<sup>4</sup>

19 Here, the primary relief sought is an injunction. The first  
20 paragraph of the complaint states: "This complaint is filed under  
21 Section 16 of the Clayton Act, 15 U.S.C. § 26, to obtain injunctive  
22 relief . . . ." Further, members of the nation-wide class are far  
23 more numerous than the members of the Indirect State Classes. The  
24 nation-wide class includes persons in all fifty states, the

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26 <sup>4</sup>IP Plaintiffs erroneously cite Dukes v. Wal-Mart, Inc., 509  
27 F.3d 1168 (9th Cir. 2007). However, by order of the Ninth Circuit,  
28 that opinion "shall not be cited as precedent by or to any court of  
the Ninth Circuit." Dukes v. Wal-Mart, Inc., 556 F.3d 919 (9th  
Cir. 2009).

1 District of Columbia, and Puerto Rico who indirectly purchased  
2 SRAM. Moreover, the long-lasting effect of an injunction would  
3 likely be greater than a damages award. See Ellis v. Costco  
4 Wholesale Corp., 240 F.R.D. 627, 643 (N.D. Cal. 2007) (certifying  
5 Rule 23(b)(2) class where injunction would have "far-reaching"  
6 effects on defendant's promotion practices and would "benefit class  
7 members in the same way").

8 Defendants argue that IP Plaintiffs do not have standing to  
9 assert their claim for injunctive relief. The Court disagrees.  
10 Article III limits the jurisdiction of the federal courts to  
11 "cases" and "controversies." In order to satisfy the "case or  
12 controversy" requirement, a plaintiff must show that: "(1) he or  
13 she has suffered an injury in fact that is concrete and  
14 particularized, and actual or imminent; (2) the injury is fairly  
15 traceable to the challenged conduct; and (3) the injury is likely  
16 to be redressed by a favorable court decision." Salmon Spawning &  
17 Recovery Alliance v. Gutierrez, 545 F.3d 1220, 1225 (9th Cir.  
18 2008). "Article III standing requires an injury that is actual or  
19 imminent, not conjectural or hypothetical." Cole v. Oroville Union  
20 High Sch. Dist., 228 F.3d 1092, 1100 (9th Cir. 2000) (internal  
21 quotation marks omitted). A plaintiff seeking declaratory and  
22 injunctive relief cannot rely solely on a past injury; instead, he  
23 or she must demonstrate a "very significant possibility of future  
24 harm" to warrant the requested relief. San Diego County Gun Rights  
25 Comm. v. Reno, 98 F.3d 1121, 1126 (9th Cir. 1996).

26 At this stage in the proceedings, IP Plaintiffs have alleged  
27 sufficient facts to establish Article III standing for their  
28 nation-wide injunctive relief class. IP Plaintiffs allege that

1 Defendants and their co-conspirators entered into a continuing  
2 conspiracy in restraint of trade artificially to raise prices for  
3 SRAM in the United States. They further allege that these market-  
4 wide overcharges were then passed through the chains of  
5 distribution, and that they were injured by paying supra-  
6 competitive prices when they indirectly purchased Defendants'  
7 products.

8 Finally, Defendants argue that, because IP Plaintiffs seek to  
9 certify a nation-wide injunctive class from November 1, 1996  
10 through December 31, 2006, they have impliedly alleged that the  
11 conspiracy ended in 2006. However, a finite proposed class period  
12 does not defeat certification of a class under Rule 23(b)(2). See,  
13 e.g., Jaffe v. Morgan Stanley & Co., 2008 WL 346417, at \*3 (N.D.  
14 Cal.) (certifying injunctive-relief class for settlement affecting  
15 persons employed by the defendants "at any time between October 12,  
16 2002 and December 3, 2007). Further, IP Plaintiffs allege that the  
17 same market conditions that facilitated the conspiracy from 1996 to  
18 2006 continue today. They allege that Defendants' price-fixing  
19 resulted from a systematic, repeated pattern of sharing sensitive  
20 competitive information which was greatly facilitated by the cross-  
21 competitor business relationships that still exist. Thus, there is  
22 alleged a significant risk that the conspiracy will persist or re-  
23 form in the future. Therefore, the Court certifies a nation-wide  
24 class under Rule 23(b)(2).

25 IV. Class Certification Under Rule 23(b)(3)

26 A. Predominance

27 IP Plaintiffs' motion for certification under Rule 23(b)(3)  
28 centers around the issue of predominance. "The Rule 23(b)(3)

1 predominance inquiry tests whether proposed classes are  
2 sufficiently cohesive to warrant adjudication by representation."  
3 Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 623 (1997). "When  
4 common questions present a significant aspect of the case and they  
5 can be resolved for all members of the class in a single  
6 adjudication, there is clear justification for handling the dispute  
7 on a representative rather than an individual basis." Hanlon, 150  
8 F.3d at 1022 (internal quotation marks omitted). "The common  
9 issues must only predominate; they do not have to be dispositive of  
10 the litigation." In re Lorazepam & Clorazepate Antitrust Litig.,  
11 202 F.R.D. 12, 29 (D.D.C. 2001).

12 To determine whether the predominance requirement is  
13 satisfied, "courts must identify the issues involved in the case  
14 and determine which are subject to 'generalized proof,' and which  
15 must be the subject of individualized proof." In re Dynamic Random  
16 Access Memory (DRAM) Antitrust Litig., 2006 WL 1530166, at \*6 (N.D.  
17 Cal.).

18 Liability in an antitrust case is based on: (1) whether there  
19 was a conspiracy to fix prices in violation of the antitrust laws;  
20 (2) whether the plaintiffs sustained an antitrust injury, or the  
21 "impact" of the defendants' unlawful activity; and (3) the amount  
22 of damages sustained as a result of the antitrust violations. In  
23 re Dynamic Random Access Memory (DRAM) Antitrust Litig., 2006 WL  
24 1530166, at \*7 (N.D. Cal.).

25 IP Plaintiffs need not show that there will be common proof on  
26 each element of the claim. "In price-fixing cases, courts  
27 repeatedly have held that the existence of the conspiracy is the  
28 predominant issue and warrants certification even where significant

1 individual issues are present." Thomas & Thomas Rodmakers, Inc. v.  
2 Newport Adhesives & Composites, Inc., 209 F.R.D. 159, 167 (C.D.  
3 Cal. 2002). "[C]ommon liability issues such as conspiracy or  
4 monopolization have, almost invariably, been held to predominate  
5 over individual issues." 6 Newberg on Class Actions, at § 18.25.

6 Here, the central issue in the case is the existence of  
7 Defendants' price-fixing conspiracy. IP Plaintiffs allege that  
8 Defendants engaged in illicit communications with each other to  
9 share pricing and other sensitive competitive information related  
10 to SRAM, and that they set common minimum prices of SRAM based on  
11 this information. Differences among class members regarding the  
12 SRAM products they purchased, from whom they purchased the products  
13 and the price at which they purchased them relate primarily to the  
14 amount of damages and not the common issue of Defendants' conduct.

15 Defendants focus their arguments on the second element of the  
16 antitrust claim; they assert that IP Plaintiffs have failed to  
17 demonstrate that common proof can be used to show class-wide  
18 impact. As the court in DRAM stated:

19 [D]uring the class certification stage, the court must  
20 simply determine whether plaintiffs have made a  
21 sufficient showing that the evidence they intend to  
22 present concerning antitrust impact will be made using  
23 generalized proof common to the class and that these  
24 common issues will predominate. The court cannot weigh  
in on the merits of plaintiffs' substantive arguments,  
and must avoid engaging in a battle of expert testimony.  
Plaintiffs need only advance a plausible methodology to  
demonstrate that antitrust injury can be proven on a  
class-wide basis.

25 Id. at \*9 (citations and internal quotation marks omitted). "On a  
26 motion for class certification, the Court only evaluates whether  
27 the method by which plaintiffs propose to prove class-wide impact  
28 could prove such impact, not whether plaintiffs in fact can prove



1 class-wide impact." In re Magnetic Audiotape Antitrust Litig.,  
 2 2001 WL 619305, at \*4 (S.D.N.Y. 2001); See In re Flat Glass  
 3 Antitrust Litig., 191 F.R.D. 472, 485-88 (W.D. Pa. 1999); In re  
 4 Polypropelene Carpet Antitrust Litig., 178 F.R.D. 603, 620-23 (N.D.  
 5 Ga. 1997).

6 Many courts have recognized a presumption of class-wide  
 7 antitrust impact.<sup>5</sup> For instance, California courts routinely  
 8 recognize a presumption of class-wide impact for indirect purchaser  
 9 antitrust price-fixing claims. See B.W.I. Custom Kitchen v. Owens-  
 10 Illinois, Inc., 191 Cal. App. 3d 1341, 1351-52 (1987) ("courts have  
 11 assumed consumers were injured when they purchased products in an  
 12 anticompetitive market" even when the market is "characterized by  
 13 individually negotiated prices, varying profit margins, and intense  
 14 competition"); Hopkins v. De Beers Centenary AG, 2005 WL 1020868,  
 15 at \*4 (Cal. Super.) ("fact-of-injury is assumed for class  
 16 certification purposes"); Microsoft I-V Cases, 2000 WL 35568182, at  
 17 88,563-64 (Cal. Super.) ("A per se violation raises a presumption  
 18 of harm because conduct such as a conspiracy to fix prices has the  
 19 sole purpose of artificially raising the price of the item. It  
 20 follows that consumers of the product pay more than they would in a  
 21 competitive market even if the prices charged to direct purchasers  
 22 vary." ).

23 The presumption of impact is not necessarily rebutted even if  
 24 an intermediary has altered the product. In re Cipro Cases I and  
 25 II, 121 Cal App. 4th 402, 416 (2004). Impact "is ordinarily a

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26  
 27 <sup>5</sup>The existence of a presumption of antitrust impact is a  
 28 matter of substantive law. Computer Economics, Inc. v. Gartner  
Group, Inc., 50 F. Supp. 2d 980, 990 (S.D. Cal. 1999); In re  
Relafen Antitrust Litig., 221 F.R.D. 260, 288 (D. Mass. 2004).

1 permissible assumption in cases where consumers have purchased  
2 products in an anticompetitive market, even if some consumers did  
3 not actually have to pay the overcharge because of their individual  
4 circumstances." Id. at 413.

5 Some federal courts recognize the same presumption. See In re  
6 Potash Antitrust Litig., 159 F.R.D. 682, 693 (D. Minn. 1995) ("[A]s  
7 a general rule in antitrust price-fixing cases, questions common to  
8 the members of the class will predominate over questions affecting  
9 only individual members."); In re Catfish Antitrust Litig., 826 F.  
10 Supp. 1019, 1041 (N.D. Miss. 1993) ("[I]n an illegal price-fixing  
11 scheme, there is a presumption that all purchasers will be  
12 impacted/injured by having to pay the higher price."); In re Cement  
13 and Concrete Antitrust Litig., 1979 WL 1595, at \*3 (D. Ariz. 1979)  
14 ("Courts have consistently held that an illegal price fixing scheme  
15 presumptively impacts upon all purchasers of a price fixed product  
16 in a conspiratorially affected market.").

17 Notwithstanding this presumption, IP Plaintiffs cannot  
18 demonstrate common impact by simply alleging a price-fixing  
19 conspiracy. The "problem of proof in an indirect purchaser case is  
20 intrinsically more complex [than in a direct purchaser case],  
21 because the damage model must account for the actions of innocent  
22 intermediaries who allegedly passed on the overcharge." William H.  
23 Page, The Limits of State Indirect Purchaser Suits: Class  
24 Certification in the Shadow of Illinois Brick, 67 Antitrust L.J. 4,  
25 12 (1999).

26 The Court granted class certification in the Direct Purchaser  
27 (DP) Plaintiffs' class action. There, despite customer, pricing  
28 and product differences, the Court held that the methodologies

1 advanced by DP Plaintiffs' expert would allow impact to be  
2 demonstrated with generalized proof. However, here, the issue is  
3 "from one to several steps removed from the inquiry in the direct  
4 purchaser class action." Methionine I, 204 F.R.D. at 164. IP  
5 Plaintiffs must "show that there is a reasonable method for  
6 determining on a class-wide basis whether and to what extent that  
7 overcharge was passed on to each of the [IP Plaintiffs] at all  
8 levels of the distribution chain." Id.; see also, Robert Harris &  
9 Lawrence A. Sullivan, Passing on the Monopoly Overcharge: A  
10 Comprehensive Policy Analysis, 128 U. Pa. L. Rev. 269, 315 (1979)  
11 (H&S Article) ("Before the incidence of an overcharge can be  
12 traced, one must be able to identify the distribution chain and  
13 follow transactions down the chain."). IP Plaintiffs must find a  
14 way to account for the decision-making of a variety of resellers  
15 and manufacturers in an intricate distribution chan. In evaluating  
16 a method to prove injury to all IP Plaintiffs, it is important to  
17 note that SRAM is but one component of an end-product and that it  
18 was sold to some indirect purchasers as a stand-alone product but  
19 to others bundled with other products. "Each divergent factor --  
20 customer size, type, procurement channel, product, distribution  
21 step -- is a factor that increases the likelihood that proof of  
22 pass-through can only be shown with resort to individualized  
23 proof." California v. Infineon Technologies AG, 2008 WL 4155665,  
24 at \*11 (N.D. Cal.).

25 Here, IP Plaintiffs' method of proving injury on a class-wide  
26 basis is based on the declarations of their experts, economists  
27 Drs. Michael J. Harris and Mark Dwyer. Dr. Harris explains that,  
28 according to the H&S article, there are five classes of factors

1 that should be considered in evaluating whether generalized  
2 evidence can be used to determine the rate of pass-through. These  
3 include temporal relationships, pricing practices, directness of  
4 affected costs, supply and demand.

5 Temporal factors relate to the frequency of price changes and  
6 the duration of anti-competitive overcharge. Pricing practices  
7 relate to the consistency and basis of pricing policy. The  
8 directness of affected costs refers to whether an overcharge  
9 affects a direct (i.e. variable) cost or an indirect (i.e.  
10 overhead) cost. Because SRAM is a direct cost, Dr. Harris claims  
11 that overcharges will be passed through sooner and at a higher  
12 rate. The more elastic the supply-curve of an individual  
13 intermediary the higher is the rate of pass-through. A less  
14 elastic demand-curve will increase the rate of pass-through. Dr.  
15 Harris concludes, "Taken together, the theoretical issues discussed  
16 above as applied to the SRAM product markets indicate that, a-  
17 priori, one fully expects that these markets would exhibit a high  
18 degree of pass through." Harris Decl. ¶ 67. This economic  
19 evidence would be offered by the proposed class representatives and  
20 by every single individual class member if their claims were  
21 separately tried to a jury to prove impact and the amount of  
22 damages suffered. Thus, this evidence is common to all class  
23 members for class certification purposes.

24 Dr. Dwyer proposes two different types of regression models  
25 that will establish that the fact of injury can be shown on a  
26 class-wide basis using common proof: a reduced form model and a  
27 structural model. A reduced form model can be used when component  
28 cost information is provided. This model measures the extent of

1 pass-through of component costs and the prices paid for end-use  
2 products. The structural model can be used regardless of whether  
3 component cost information is available. This model uses end-use  
4 purchase price information and analyzes market supply and demand to  
5 determine the presence of pass-through.

6 Defendants argue that the reduced form model fails to take  
7 into account actual SRAM cost data and that the model ignores  
8 entire distribution chains. However, Dr. Dwyer states that the  
9 "data provided by the OEMs specify SRAM cost components themselves,  
10 and allow for a further statistical test, precisely, whether the  
11 SRAM cost pass-through differs from the overall BoM (i.e.,  
12 component cost) pass-through rate." Dwyer Decl. ¶ 38. In fact,  
13 Dr. Dwyer performed a preliminary reduced form analysis utilizing  
14 both total BoM costs and SRAM component costs for a router that  
15 contains SRAM and found a 103 percent pass-through rate on sales to  
16 end-users. Dwyer Reply Decl. ¶¶ 30-32. Defendants assert that  
17 relying on BoM data is improper because it is not an accurate  
18 source of costs; however, BoMs are commonly used by OEMs and  
19 contract manufacturers in the electronics industry to monitor input  
20 costs and adjust pricing.

21 Defendants also argue that the structural model is flawed  
22 because it assumes pass-through without actually testing for it.  
23 However, the structural model derives a pass-through rate from many  
24 economic variables, such as the price elasticity of end-use  
25 products, the structure of competition among product suppliers and  
26 the degree to which cost changes are common across end-use  
27 products. Dr. Dwyer notes that pass-through rates vary  
28 significantly depending on the values of these variables.

1 Defendants also criticize IP Plaintiffs for using aggregated  
2 and averaged data in their structural model because such data could  
3 yield "false-positive pass-through." Opposition at 31. However,  
4 this criticism is not well taken. In the context of an IP  
5 antitrust case against Microsoft, a district court in Minnesota  
6 held,

7 The damages question for trial is presumably not about  
8 whether a specific Microsoft price increase found its  
9 way through the distribution chain and resulted in an  
10 increase in the price paid by a specific class member.  
11 Rather, the question is how a series of Microsoft price  
12 increases, and/or a series of Microsoft failures to  
13 reduce prices, impacted the price each consumer paid.  
14 The question of what would have happened but for  
Microsoft's monopoly overcharge is a hypothetical, and  
a hypothetical question generally cannot be answered by  
historical data about what actually happened, but must  
often be answered by general principles about what  
generally tends to happen. Thus, average pass through  
rates appear reasonable and even necessary to prove  
damages here.

15 Gordon v. Microsoft Corp., 2003 WL 23105550, at \*3 (D. Minn.); see  
16 also In re Cardizem CD Antitrust Litig., 200 F.R.D. 326, 345, 350  
17 (E.D. Mich. 2001); In re NASDAQ Market-Makers Antitrust Litig., 169  
18 F.R.D. 493, 523 (S.D.N.Y. 1996); Presidio Golf Club of San  
19 Francisco v. National Linen Supply Corp., 1976 WL 1359, at \*5 (N.D.  
20 Cal.). Thus, the use of averaged and aggregated data is not fatal  
21 to IP Plaintiffs' econometric models.

22 Defendants argue that the SRAM distribution chain is too  
23 complex from which to discern evidence of pass-through. However,  
24 these complexities do not preclude an estimation of whether an SRAM  
25 overcharge impacted end purchasers of SRAM-containing products.  
26 Dr. Harris has noted that many other markets have the same features  
27 as the markets at issue here, and those markets are routinely  
28 tested for relationships among variables of interest. Harris Reply

Decl. ¶¶ 44-48. Moreover, divergent pricing and sales practices are not necessarily an impediment to measuring pass-through. Courts have held that “‘contentions of infinite diversity of product, marketing practices, and pricing have been made in numerous cases and rejected.’” Rosack v. Volvo of America Corp., 131 Cal. App. 3d 741, 755 (1982) (quoting In re Folding Carton Antitrust Litig., 75 F.R.D. 727, 734 (N.D. Ill. 1977)). Courts may look past “surface distinctions” in “marketing mechanisms” when analyzing whether to certify indirect purchaser classes; “[i]dentical products, uniform prices, and unitary distribution patterns are not indispensable for class certification in this context.’” B.W.I., 191 Cal. App. 3d at 1350 (quoting Shelter Realty Corp. v. Allied Maintenance Corp., 75 F.R.D. 34, 37 (S.D.N.Y. 1977)).

Defendants also argue that, because SRAM is a relatively small portion of the price of an overall product, any price increase in SRAM will have a de minimis effect. This argument has no merit. Defendants may not shield themselves from liability by fixing prices on a relatively inexpensive item. See Free v. Abbott Laboratories, 982 F. Supp. 1211, 1217 (M.D. La. 1997) (stating that “a price fixing scheme at the top of the distribution chain” would be actionable if it only “increased the retail price of the product by a few cents per unit”).

In sum, IP Plaintiffs have presented plausible methodologies that will be used to perform quantitative analyses to demonstrate class-wide injury.

As to the third element of an anti-trust claim, damages, “[a]ntitrust plaintiffs have a limited burden with respect to

1 showing that individual damages issues do not predominate." In re  
2 Potash Antitrust Litig., 159 F.R.D. at 697. IP Plaintiffs are not  
3 required to "supply a 'precise damage formula' at the certification  
4 stage of an antitrust action. Instead, in assessing whether to  
5 certify a class, the Court's inquiry is limited to whether or not  
6 the proposed methods are so insubstantial as to amount to no method  
7 at all." Id.

8 IP Plaintiffs have proffered three methodologies for  
9 calculating damages on a class-wide basis: the first compares SRAM  
10 prices before and after the period of the price-fixing conspiracy;  
11 the second compares SRAM prices during the class period with prices  
12 for comparable products; and the third uses Defendants' cost data  
13 to estimate what competitive prices for SRAM should have been. Dr.  
14 Dwyer concludes that these methods will "allow direct computation  
15 of per-unit overcharges to indirect SRAM purchasers." Dwyer Decl.  
16 ¶ 63. The validity of those methods "will be adjudicated at trial  
17 based upon economic theory, data sources, and statistical  
18 techniques that are entirely common to the class." In re Market-  
19 Makers Antitrust Litig., 169 F.R.D. at 521.

20 Defendants have not shown that the methods are "so  
21 insubstantial as to amount to no method at all." Potash, 159  
22 F.R.D. at 697. Therefore, the Court concludes that common issues  
23 predominate with respect to IP Plaintiffs' proof of the damages  
24 element of the antitrust conspiracy claim, as well as the  
25 conspiracy and impact elements.

26 B. Superiority

27 Rule 23(b)(3) also requires that class resolution must be  
28 "superior to other available methods for the fair and efficient



1 adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). "The  
2 policy at the very core of the class action mechanism is to  
3 overcome the problem that small recoveries do not provide the  
4 incentive for any individual to bring a solo action prosecuting his  
5 or her rights." Amchem Prod., Inc. v. Windsor, 521 U.S. 591, 617  
6 (1997). In antitrust cases such as this, the damages of individual  
7 indirect purchasers are likely to be too small to justify  
8 litigation, but a class action would offer those with small claims  
9 the opportunity for meaningful redress.

10 Certifying the IP national injunctive relief class and state  
11 classes is superior to, and more manageable than, any other  
12 procedure available for the treatment of factual and legal issues  
13 raised by IP Plaintiffs' claims. What would be unmanageable is the  
14 institution of countless individual lawsuits with the same facts  
15 and legal issues. See In re Terazosin Hydrochloride Antitrust  
16 Litig., 220 F.R.D. 672, 700 (S.D. Fla. 2004) ("Multiple lawsuits  
17 brought by thousands of consumers and third-party payors in  
18 seventeen different states would be costly, inefficient, and would  
19 burden the court system."); See In re Cardizem, 200 F.R.D. at 351.

20 Defendants are also concerned that this Court will be unable  
21 to manage state-law claims from twenty-seven state classes.  
22 However, there is no qualitative difference between a federal  
23 district court considering class certification of state claims  
24 under that state law and a federal court serving as a multi-  
25 district litigation forum performing the same task for many federal  
26 courts. Moreover, courts frequently certify classes under the laws  
27 of multiple jurisdictions. See, e.g., Norvir Anti-Trust Litig.,  
28 2007 WL 1689899, at \*8 (N.D. Cal.) (certifying class under the

1 common law of forty-eight states); In re Pharm. Indus. Average  
2 Wholesale Price Litig., 233 F.R.D. 229, 230-31 (D. Mass. 2006)  
3 (certifying multi-state defendant subclasses under the consumer  
4 protection laws of forty-one states). Thus, a class action is the  
5 superior method of resolving this controversy.

6 V. Expert Evidence

7 To support their motion for class certification, IP Plaintiffs  
8 rely on the declarations of experts Drs. Mark Dwyer and Michael  
9 Harris. To support their opposition to IP Plaintiffs' motion,  
10 Defendants rely on the declarations of expert Dr. Michelle Burtis.  
11 Each party moves to exclude the other's expert declarations under  
12 Federal Rule of Evidence 702 and Daubert v. Merrell Dow  
13 Pharmaceuticals, Inc., 509 U.S. 579 (1993).

14 Federal Rule of Evidence 702 provides:

15 If scientific, technical, or other specialized knowledge  
16 will assist the trier of fact to understand the evidence  
17 or determine a fact in issue, a witness qualified as an  
18 expert by knowledge, skill, experience, training, or  
19 education, may testify thereto in the form of an opinion  
20 or otherwise, if (1) the testimony is based upon  
21 sufficient facts or data, (2) the testimony is the product  
22 of reliable principles and methods, and (3) the witness  
23 has applied the principles and methods reliably to the  
24 facts of the case.

25 Under the Federal Rules of Evidence, "the trial judge must  
26 ensure that any and all scientific testimony or evidence admitted  
27 is not only relevant, but reliable." Daubert, 509 U.S. at 589. At  
28 the class certification stage of the proceedings, "robust  
gatekeeping" of expert evidence is not required; rather, the court  
must assess only whether expert evidence is useful in evaluating  
whether class certification requirements have been met. Kurihara  
v. Best Buy Co., 2007 WL 2501698, at \*5 (N.D. Cal.) Daubert's

1 relevance and reliability requirements serve as "useful guideposts"  
2 but the court retains discretion in determining how to test  
3 reliability as well as whether an expert's testimony is both  
4 relevant and reliable. Id.; see also Kumho Tire Co. v. Carmichael,  
5 526 U.S. 137, 152 (1999). Although this standard is "more  
6 lenient," the court "'must ensure that the basis of the expert  
7 opinion is not so flawed that it would be inadmissible as a matter  
8 of law.'" Sepulveda v. Wal-Mart Stores, Inc., 237 F.R.D. 229, 235  
9 (C.D. Cal. 2006) (quoting In re Visa Check/MasterMoney Antitrust  
10 Litig., 280 F.3d 124, 135 (2d Cir. 2001)).

11 The question for the court is whether the expert evidence is  
12 sufficiently probative to be useful in evaluating whether class  
13 certification requirements have been met. See In re Polypropylene  
14 Carpet Antitrust Litigation, 996 F. Supp. 18, 26 (N.D. Ga. 1997)  
15 (at class certification stage court only examined whether the  
16 expert's methodology will (a) comport with basic principles,  
17 (b) have any probative value and (c) primarily use evidence that is  
18 common to all members of the proposed class); Bacon v. Honda of  
19 America Mfg., Inc., 205 F.R.D. 466, 470-71 (S.D. Ohio 2001) ("For  
20 common questions to exist, plaintiffs' statistical evidence must  
21 logically support the inference of discrimination against the class  
22 asserted.") (citation omitted).

23 Although each side presents myriad valid challenges to the  
24 other's expert, the Court concludes that these challenges are of  
25 the type that go to the weight of the evidence, not the  
26 admissibility. The economic principles and regression models  
27 relied upon by IP Plaintiffs' experts, Drs. Harris and Dwyer, are  
28 solidly grounded in the academic literature. They cite extensive

1 facts and data from this case that they reviewed and relied upon in  
2 rendering their opinions. The Court concludes that their opinions  
3 are reliable and admissible.

4 Similarly, Dr. Burtis' expert opinions are also supported by  
5 academic and economic literature. She reviewed IP Plaintiffs'  
6 allegations, Drs. Harris' and Dwyer's opinions and third-party data  
7 related to sales and purchases of the relevant products.  
8 Therefore, the Court concludes that her opinions are also reliable  
9 and admissible. The parties' motions to exclude reflect  
10 disagreement with the opposing parties' position; however, this  
11 disagreement does not warrant exclusion.<sup>6</sup>

#### 12 CONCLUSION

13 For the foregoing reasons, the Court grants IP Plaintiffs'  
14 motion (Docket No. 645) for class certification.

15 The following nation-wide plaintiff class is hereby certified  
16 pursuant to Fed. R. Civ. P. 23(a) and (b)(2) for injunctive and  
17 declaratory relief:

18 All persons and entities residing in the United States  
19 who, from November 1, 1996 through at least December 31,  
20 2006, purchased SRAM in the United States indirectly from  
21 the Defendants for their own use and not for resale.  
22 Specifically excluded from this Class are the Defendants;  
23 the officers, directors or employees of any Defendant;  
24 any entity in which any Defendant has a controlling  
interest; and any affiliate, legal representative, heir  
or assign of any Defendant. Also excluded are any  
federal, state or local governmental entities, any  
judicial officer presiding over this action and the  
members of his/her immediate family and judicial staff,  
and any juror assigned to this action.

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25  
26 <sup>6</sup>The Court notes that IP Plaintiffs did not violate the  
27 Court's May 21, 2009 Discovery Order. IP Plaintiffs' experts were  
28 permitted to analyze and opine on third party information they  
possessed at the time that they filed their initial declarations to  
the extent that information was "referred to and analyzed" by Dr.  
Burtis.

1 In addition, the following state plaintiff classes are hereby  
2 certified pursuant to Fed. R. Civ. P. 23(a) and (b)(3):

3 Arizona:

4 All persons and entities in Arizona who indirectly  
5 purchased SRAM and/or products containing SRAM, for end  
6 use and not for resale, that was manufactured and/or sold  
7 by one or more of the Defendants during the Class Period.  
8 Specifically excluded from this Class are the Defendants,  
9 the officers, directors or employees of any Defendant; any  
10 entity in which any Defendant has a controlling interest;  
11 and any affiliate, legal representative, heir or assign of  
12 any Defendant. Also excluded are any federal, state or  
13 local governmental entities, any judicial officer  
14 presiding over this action and the members of his/her  
15 immediate family and judicial staff, and any juror  
16 assigned to this action.

17 Arkansas:

18 All persons and entities in Arkansas who indirectly  
19 purchased SRAM and/or products containing SRAM, for end  
20 use and not for resale, that was manufactured and/or sold  
21 by one or more of the Defendants during the Class Period.  
22 Specifically excluded from this Class are the Defendants,  
23 the officers, directors or employees of any Defendant; any  
24 entity in which any Defendant has a controlling interest;  
25 and any affiliate, legal representative, heir or assign of  
26 any Defendant. Also excluded are any federal, state or  
27 local governmental entities, any judicial officer  
28 presiding over this action and the members of his/her  
29 immediate family and judicial staff, and any juror  
30 assigned to this action.

31 California:

32 All persons and entities in California who indirectly  
33 purchased SRAM and/or products containing SRAM, for end  
34 use and not for resale, that was manufactured and/or sold  
35 by one or more of the Defendants during the Class Period.  
36 Specifically excluded from this Class are the Defendants,  
37 the officers, directors or employees of any Defendant; any  
38 entity in which any Defendant has a controlling interest;  
39 and any affiliate, legal representative, heir or assign of  
40 any Defendant. Also excluded are any federal, state or  
41 local governmental entities, any judicial officer  
42 presiding over this action and the members of his/her  
43 immediate family and judicial staff, and any juror  
44 assigned to this action.

45 Florida:

46 All persons and entities in Florida who indirectly

1 purchased SRAM and/or products containing SRAM, for end  
2 use and not for resale, that was manufactured and/or sold  
3 by one or more of the Defendants during the Class Period.  
4 Specifically excluded from this Class are the Defendants,  
5 the officers, directors or employees of any Defendant; any  
6 entity in which any Defendant has a controlling interest;  
7 and any affiliate, legal representative, heir or assign of  
8 any Defendant. Also excluded are any federal, state or  
9 local governmental entities, any judicial officer  
10 presiding over this action and the members of his/her  
11 immediate family and judicial staff, and any juror  
12 assigned to this action.

13 Hawaii:

14 All persons and entities in Hawaii who indirectly purchased  
15 SRAM and/or products containing SRAM, for personal, family  
16 or household use, that was manufactured and/or sold by one  
17 or more of the Defendants during the Class Period.  
18 Specifically excluded from this Class are the Defendants,  
19 the officers, directors or employees of any Defendant; any  
20 entity in which any Defendant has a controlling interest;  
21 and any affiliate, legal representative, heir or assign of  
22 any Defendant. Also excluded are any federal, state or  
23 local governmental entities, any judicial officer presiding  
24 over this action and the members of his/her immediate  
25 family and judicial staff, and any juror assigned to this  
26 action.

27 Iowa:

28 All persons and entities in Iowa who indirectly purchased  
SRAM and/or products containing SRAM, for end use and not  
for resale, that was manufactured and/or sold by one or  
more of the Defendants during the Class Period.  
Specifically excluded from this Class are the Defendants,  
the officers, directors or employees of any Defendant; any  
entity in which any Defendant has a controlling interest;  
and any affiliate, legal representative, heir or assign of  
any Defendant. Also excluded are any federal, state or  
local governmental entities, any judicial officer presiding  
over this action and the members of his/her immediate  
family and judicial staff, and any juror assigned to this  
action.

Kansas:

All persons and entities in Kansas who indirectly purchased  
SRAM and/or products containing SRAM, for personal, family  
or household use, that was manufactured and/or sold by one  
or more of the Defendants during the Class Period.  
Specifically excluded from this Class are the Defendants,  
the officers, directors or employees of any Defendant; any  
entity in which any Defendant has a controlling interest;  
and any affiliate, legal representative, heir or assign of

1 any Defendant. Also excluded are any federal, state or  
2 local governmental entities, any judicial officer presiding  
3 over this action and the members of his/her immediate  
family and judicial staff, and any juror assigned to this  
action.

4 Maine:

5 All persons and entities in Maine who indirectly purchased  
6 SRAM and/or products containing SRAM, for personal family  
or household use, that was manufactured and/or sold by one  
7 or more of the Defendants during the Class Period.  
Specifically excluded from this Class are the Defendants,  
8 the officers, directors or employees of any Defendant; any  
entity in which any Defendant has a controlling interest;  
9 and any affiliate, legal representative, heir or assign of  
any Defendant. Also excluded are any federal, state or  
10 local governmental entities, any judicial officer presiding  
over this action and the members of his/her immediate  
11 family and judicial staff, and any juror assigned to this  
action.

12 Massachusetts:

13 All persons and entities in Massachusetts who indirectly  
14 purchased SRAM and/or products containing SRAM, for end use  
and not for resale, that was manufactured and/or sold by  
15 one or more of the Defendants during the Class Period.  
Specifically excluded from this Class are the Defendants,  
16 the officers, directors or employees of any Defendant; any  
entity in which any Defendant has a controlling interest;  
17 and any affiliate, legal representative, heir or assign of  
any Defendant. Also excluded are any federal, state or  
18 local governmental entities, any judicial officer presiding  
over this action and the members of his/her immediate  
19 family and judicial staff, and any juror assigned to this  
action.

20 Michigan:

21 All persons and entities in Michigan who indirectly  
22 purchased SRAM and/or products containing SRAM, for end use  
and not for resale, that was manufactured and/or sold by  
23 one or more of the Defendants during the Class Period.  
Specifically excluded from this Class are the Defendants,  
24 the officers, directors or employees of any Defendant; any  
entity in which any Defendant has a controlling interest;  
25 and any affiliate, legal representative, heir or assign of  
any Defendant. Also excluded are any federal, state or  
26 local governmental entities, any judicial officer presiding  
over this action and the members of his/her immediate  
27 family and judicial staff, and any juror assigned to this  
action.



## 1 Minnesota:

2 All persons and entities in Minnesota who indirectly  
3 purchased SRAM and/or products containing SRAM, for end use  
4 and not for resale, that was manufactured and/or sold by  
5 one or more of the Defendants during the Class Period.  
6 Specifically excluded from this Class are the Defendants,  
7 the officers, directors or employees of any Defendant; any  
8 entity in which any Defendant has a controlling interest;  
9 and any affiliate, legal representative, heir or assign of  
10 any Defendant. Also excluded are any federal, state or  
11 local governmental entities, any judicial officer presiding  
12 over this action and the members of his/her immediate  
13 family and judicial staff, and any juror assigned to this  
14 action.

## 9 Montana:

10 All persons and entities in Montana who indirectly  
11 purchased SRAM and/or products containing SRAM, for end use  
12 and not for resale, that was manufactured and/or sold by  
13 one or more of the Defendants during the Class Period.  
14 Specifically excluded from this Class are the Defendants,  
15 the officers, directors or employees of any Defendant; any  
16 entity in which any Defendant has a controlling interest;  
17 and any affiliate, legal representative, heir or assign of  
18 any Defendant. Also excluded are any federal, state or  
19 local governmental entities, any judicial officer presiding  
20 over this action and the members of his/her immediate  
21 family and judicial staff, and any juror assigned to this  
22 action.

## 17 Nevada:

18 All persons and entities in Nevada who indirectly purchased  
19 SRAM and/or products containing SRAM, for end use and not  
20 for resale, that was manufactured and/or sold by one or  
21 more of the Defendants during the Class Period.  
22 Specifically excluded from this Class are the Defendants,  
23 the officers, directors or employees of any Defendant; any  
24 entity in which any Defendant has a controlling interest;  
25 and any affiliate, legal representative, heir or assign of  
26 any Defendant. Also excluded are any federal, state or  
27 local governmental entities, any judicial officer presiding  
28 over this action and the members of his/her immediate  
family and judicial staff, and any juror assigned to this  
action.

## 25 New Mexico:

26 All persons and entities in New Mexico who indirectly  
27 purchased SRAM and/or products containing SRAM, for end use  
28 and not for resale, that was manufactured and/or sold by one  
or more of the Defendants during the Class Period.  
Specifically excluded from this Class are the Defendants,



1 the officers, directors or employees of any Defendant; any  
2 entity in which any Defendant has a controlling interest;  
3 and any affiliate, legal representative, heir or assign of  
4 any Defendant. Also excluded are any federal, state or  
local governmental entities, any judicial officer presiding  
over this action and the members of his/her immediate family  
and judicial staff, and any juror assigned to this action.

5 New York:

6 All persons and entities in New York who indirectly  
7 purchased SRAM and/or products containing SRAM, for end use  
and not for resale, that was manufactured and/or sold by one  
or more of the Defendants during the Class Period.  
8 Specifically excluded from this Class are the Defendants,  
9 the officers, directors or employees of any Defendant; any  
entity in which any Defendant has a controlling interest;  
10 and any affiliate, legal representative, heir or assign of  
any Defendant. Also excluded are any federal, state or  
11 local governmental entities, any judicial officer presiding  
over this action and the members of his/her immediate family  
and judicial staff, and any juror assigned to this action.

12 North Carolina:

13 All persons and entities in North Carolina who indirectly  
14 purchased SRAM and/or products containing SRAM, for end use  
and not for resale, that was manufactured and/or sold by one  
15 or more of the Defendants during the Class Period.  
Specifically excluded from this Class are the Defendants,  
16 the officers, directors or employees of any Defendant; any  
entity in which any Defendant has a controlling interest;  
17 and any affiliate, legal representative, heir or assign of  
any Defendant. Also excluded are any federal, state or  
18 local governmental entities, any judicial officer presiding  
over this action and the members of his/her immediate family  
19 and judicial staff, and any juror assigned to this action.

20 North Dakota:

21 All persons and entities in North Dakota who indirectly  
22 purchased products containing SRAM, for end use and not for  
resale, that were manufactured and/or sold by one or more of  
the Defendants during the Class Period. Specifically  
23 excluded from this Class are the Defendants, the officers,  
directors or employees of any Defendant; any entity in which  
24 any Defendant has a controlling interest; and any affiliate,  
legal representative, heir or assign of any Defendant. Also  
25 excluded are any federal, state or local governmental  
entities, any judicial officer presiding over this action  
26 and the members of his/her immediate family and judicial  
staff, and any juror assigned to this action.  
27  
28

## 1 Pennsylvania:

2 All persons and entities in Pennsylvania who indirectly  
3 purchased SRAM and/or products containing SRAM, for  
4 personal, family or household use, that was manufactured  
5 and/or sold by one or more of the Defendants during the  
6 Class Period. Specifically excluded from this Class are the  
7 Defendants, the officers, directors or employees of any  
8 Defendant; any entity in which any Defendant has a  
controlling interest; and any affiliate, legal  
representative, heir or assign of any Defendant. Also  
excluded are any federal, state or local governmental  
entities, any judicial officer presiding over this action  
and the members of his/her immediate family and judicial  
staff, and any juror assigned to this action.

## 9 Puerto Rico:

10 All persons and entities in Puerto Rico who indirectly  
11 purchased products containing SRAM, for end use and not for  
12 resale, that were manufactured and/or sold by one or more of  
13 the Defendants during the Class Period. Specifically  
14 excluded from this Class are the Defendants, the officers,  
15 directors or employees of any Defendant; any entity in which  
16 any Defendant has a controlling interest; and any affiliate,  
legal representative, heir or assign of any Defendant. Also  
excluded are any federal, state or local governmental  
entities, any judicial officer presiding over this action  
and the members of his/her immediate family and judicial  
staff, and any juror assigned to this action.

## 16 Rhode Island:

17 All persons and entities in Rhode Island who indirectly  
18 purchased SRAM and/or products containing SRAM, for  
19 personal, family or household use, that was manufactured  
20 and/or sold by one or more of the Defendants during the  
21 Class Period. Specifically excluded from this Class are the  
22 Defendants, the officers, directors or employees of any  
23 Defendant; any entity in which any Defendant has a  
controlling interest; and any affiliate, legal  
representative, heir or assign of any Defendant. Also  
excluded are any federal, state or local governmental  
entities, any judicial officer presiding over this action  
and the members of his/her immediate family and judicial  
staff, and any juror assigned to this action.

## 24 South Dakota:

25 All persons and entities in South Dakota who indirectly  
26 purchased SRAM and/or products containing SRAM, for end use  
27 and not for resale, that was manufactured and/or sold by one  
28 or more of the Defendants during the Class Period.  
Specifically excluded from this Class are the Defendants,  
the officers, directors or employees of any Defendant; any

1 entity in which any Defendant has a controlling interest;  
2 and any affiliate, legal representative, heir or assign of  
3 any Defendant. Also excluded are any federal, state or  
4 local governmental entities, any judicial officer presiding  
5 over this action and the members of his/her immediate family  
6 and judicial staff, and any juror assigned to this action.

7 Tennessee:

8 All persons and entities in Tennessee who indirectly  
9 purchased SRAM and/or products containing SRAM, for end use  
10 and not for resale, that was manufactured and/or sold by one  
11 or more of the Defendants during the Class Period.  
12 Specifically excluded from this Class are the Defendants,  
13 the officers, directors or employees of any Defendant; any  
14 entity in which any Defendant has a controlling interest;  
15 and any affiliate, legal representative, heir or assign of  
16 any Defendant. Also excluded are any federal, state or  
17 local governmental entities, any judicial officer presiding  
18 over this action and the members of his/her immediate family  
19 and judicial staff, and any juror assigned to this action.

20 Utah:

21 All persons and entities in Utah who indirectly purchased  
22 SRAM and/or products containing SRAM, for end use and not  
23 for resale, that was manufactured and/or sold by one or more  
24 of the Defendants during the Class Period. Specifically  
25 excluded from this Class are the Defendants, the officers,  
26 directors or employees of any Defendant; any entity in which  
27 any Defendant has a controlling interest; and any affiliate,  
28 legal representative, heir or assign of any Defendant. Also  
excluded are any federal, state or local governmental  
entities, any judicial officer presiding over this action  
and the members of his/her immediate family and judicial  
staff, and any juror assigned to this action.

Washington:

All persons and entities in Washington who indirectly  
purchased SRAM and/or products containing SRAM, for end use  
and not for resale, that was manufactured and/or sold by one  
or more of the Defendants during the Class Period.  
Specifically excluded from this Class are the Defendants,  
the officers, directors or employees of any Defendant; any  
entity in which any Defendant has a controlling interest;  
and any affiliate, legal representative, heir or assign of  
any Defendant. Also excluded are any federal, state or  
local governmental entities, any judicial officer presiding  
over this action and the members of his/her immediate family  
and judicial staff, and any juror assigned to this action.

West Virginia:

All persons and entities in West Virginia who indirectly

1 purchased SRAM and/or products containing SRAM, for end use  
 2 and not for resale, that was manufactured and/or sold by one  
 3 or more of the Defendants during the Class Period.  
 4 Specifically excluded from this Class are the Defendants,  
 5 the officers, directors or employees of any Defendant; any  
 6 entity in which any Defendant has a controlling interest;  
 7 and any affiliate, legal representative, heir or assign of  
 8 any Defendant. Also excluded are any federal, state or  
 9 local governmental entities, any judicial officer presiding  
 10 over this action and the members of his/her immediate family  
 11 and judicial staff, and any juror assigned to this action.

7 Wisconsin:

8 All persons and entities in Wisconsin who indirectly  
 9 purchased SRAM and/or products containing SRAM, for end use  
 10 and not for resale, that was manufactured and/or sold by one  
 11 or more of the Defendants during the Class Period.  
 12 Specifically excluded from this Class are the Defendants,  
 13 the officers, directors or employees of any Defendant; any  
 14 entity in which any Defendant has a controlling interest;  
 15 and any affiliate, legal representative, heir or assign of  
 16 any Defendant. Also excluded are any federal, state or  
 17 local governmental entities, any judicial officer presiding  
 18 over this action and the members of his/her immediate family  
 19 and judicial staff, and any juror assigned to this action.

15 District of Columbia:

16 All persons and entities in the District of Columbia who  
 17 indirectly purchased SRAM and/or products containing SRAM,  
 18 for personal, family or household use, that was manufactured  
 19 and/or sold by one or more of the Defendants during the  
 20 Class Period. Specifically excluded from this Class are the  
 21 Defendants, the officers, directors or employees of any  
 22 Defendant; any entity in which any Defendant has a  
 23 controlling interest; and any affiliate, legal  
 24 representative, heir or assign of any Defendant. Also  
 25 excluded are any federal, state or local governmental  
 26 entities, any judicial officer presiding over this action  
 27 and the members of his/her immediate family and judicial  
 28 staff, and any juror assigned to this action.

22 The following Plaintiffs are appointed as class  
 23 representatives:

<u>State</u>	<u>Plaintiff</u>
Arizona	Lara Sterenberg
Arizona	United Food & Commercial Workers Local 99
Arkansas	Robert Harmon

**United States District Court**  
For the Northern District of California

1	California	Michael Brooks
2	California	Lawrence Markey
3	California	Roman J. Munoz
4	California	Joseph Solo
5	California	Stargate Films
6	California	United Food & Commercial Workers Local 8
7	District of Columbia	Dona Culver
8		
9	Florida	Ronnie Barnes
10	Florida	Ryan Edwards
11	Florida	John Pharr d/b/a JP Micro
12	Hawaii	Ramon Oyadomari
13	Hawaii	Unite Here Local 5
14	Iowa	Herbert Harmison
15	Iowa	David Sly
16	Kansas	nXio, LLC
17	Maine	Penobscot Eye Care
18	Massachusetts	James W. Allen
19	Michigan	Matthew Frank
20	Minnesota	Fairmont Orthopedics & Sports Medicine, P.A.
21	Minnesota	Reclaim Center, Inc.
22	Montana	Henry Kornegay
23	Montana	Our Montana, Inc.
24	Nevada	Culinary Workers Union Local 226
25	Nevada	Allen Robert Kelley
26	New Mexico	Daniel Yohalem
27	New York	Rodrigo Bazan Gatti
28	New York	CHP Media, Inc.

1	North Carolina	Curtis Hogue, Jr.
2	North Dakota	Ward Cater
3	Pennsylvania	Beth O'Donnell
4	Puerto Rico	Carlos R. Carrillo
5	Puerto Rico	Javier Oyola-Aleman
6	Rhode Island	Kevin Kicia
7	South Dakota	Mitch Mudlin
8	Tennessee	Frank C. Warner
9	Utah	Christopher K. Giaugue
10	Washington	Christopher Smith
11	West Virginia	Donna Hark
12	West Virginia	David Loomis
13	Wisconsin	Mark and Shannon Schneider
14	Wisconsin	Christopher J. Stawski

15       The Court appoints Zelle Hofmann Voelbel & Mason LLP as class  
 16 counsel for IP Plaintiffs. Class counsel for IP Plaintiffs shall  
 17 prepare and submit within thirty days from the date of this Order a  
 18 proposed form of notice to be sent to members of the Class.  
 19 Defendants may file any comments to the notice within fifteen days  
 20 and IP Plaintiffs may reply fifteen days thereafter. Defendants  
 21 shall prepare and submit to the Court and to counsel for IP  
 22 Plaintiffs within thirty days from the date of this Order a list of  
 23 names and addresses of all Class Members who can be identified with  
 24 diligent effort.

25       The Court denies Defendants' motions to exclude the expert  
 26 opinions and rebuttal opinions of Drs. Mark Dwyer and Michael  
 27 Harris (Docket Nos. 706 and 797); and denies IP Plaintiffs' motion  
 28 to exclude the expert opinion of Dr. Michelle Burtis (Docket No.

1 799) .

2 IT IS SO ORDERED.

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4 Dated: 11/25/09



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CLAUDIA WILKEN  
United States District Judge

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